

(d) *Administrator's action.* (1) If the Administrator approves a substitution plan, he or she will allocate allowances to the Allowance Tracking System accounts of the units under paragraph (a)(1) of this section and substitution units, as provided in the approved plan, upon issuance of an Acid Rain permit containing the plan, except that if the substitution plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan.

(2) In no event shall allowances be allocated to a substitution unit, under an approved substitution plan, for any year in excess of the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section, as adjusted by the Administrator in approving the plan.

(3) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable SO₂ emissions limitation covers the unit for any year during 1995-1999, the Administrator will specify on a case-by-case basis a method for using unit-specific and non-unit-specific emissions limitations in allocating allowances to the substitution unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in substitution units retaining allowances allocated under paragraph (d)(1) of this section for emissions reductions necessary to meet a non-unit-specific emissions limitation. Such method may require an end-of-year review and the adjustment of the allowances allocated to the substitution unit and may require the designated representative of the substitution unit to surrender allowances by the allowance transfer deadline of the year that is subject to the review. Any surrendered allowances shall have the same or an earlier compliance use date as the allowances originally allocated for the year, and the designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, such allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(e) *Special provisions—(1) Emissions Limitations.* (i) Each substitution unit governed by an approved substitution

plan shall become a Phase I unit from January 1 of the year for which the plan takes effect until January 1 of the year for which the plan is no longer in effect or is terminated. The designated representative of a substitution unit shall surrender allowances, and the Administrator will deduct allowances, in accordance with paragraph (d)(3) of this section.

(ii) Each unit under paragraph (a)(1) of this section, and each substitution unit, governed by an approved substitution plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with section 407 of the Act and regulations implementing section 407 of the Act.

(iii) Where an approved substitution plan includes a demonstration under paragraphs (c)(5)(iii) and (c)(6) of this section.

(A) The owners and operators of the substitution unit covered by the demonstration shall implement the actions described under paragraph (c)(6)(ii) of this section, as adjusted by the Administrator in approving the plan or in revising the permit. The designated representative may submit proposed permit revisions changing the description of the actions to be taken in order for the substitution unit to achieve the maximum annual average SO₂ emissions rate under the approved plan and shall include in any such submission a showing that the actions in the changed description will not be implemented during Phase I unless the unit remains a substitution unit. The permit revision will be treated as an administrative amendment, except where the Administrator determines that the change in the description alters the fundamental nature of the actions to be taken and that public notice and comment will contribute to the decision-making process, in which case the permit revision will be treated as a permit modification or, at the option of the designated representative, a fast-track modification.

(B) The designated representative of the unit under paragraph (a)(1) of this section shall surrender allowances, and the Administrator will deduct allowances, in accordance with paragraph

(c)(5)(iii)(C) of this section. The surrender and deduction of allowances as required under the prior sentence shall be the only remedy under the Act for a failure to meet the maximum annual average SO₂ emissions rate, provided that, if such deduction of allowance results in excess emissions, the remedies for excess emissions shall be fully applicable.

(2) *Liability.* The owners and operators of a unit governed by an approved substitution plan shall be liable for any violation of the plan or this section at that unit or any other unit that is the first unit's substitution unit or for which the first unit is a substitution unit under the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(3) *Termination.* (i) A substitution plan shall be in effect only in Phase I for the calendar years specified in the plan or until the calendar year for which a termination of the plan takes effect, provided that no substitution plan shall be terminated, and no unit shall be de-designated as a substitution unit, before the end of Phase I if the substitution unit serves as a control unit under a Phase I extension plan.

(ii) To terminate a substitution plan for a given calendar year prior to the last year for which the plan was approved:

(A) A notification to terminate in accordance with § 72.40(d) shall be submitted no later than 60 days before the allowance transfer deadline applicable to the given year; and

(B) In the notification to terminate, the designated representative of each unit governed by the plan shall state that he or she surrenders for deduction from the unit's Allowance Tracking System account allowances equal in number to, and with the same or an earlier compliance use date as, those allocated under paragraph (d)(1) of this section for all calendar years for which the plan is to be terminated. The designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(iii) If the requirements of paragraph (e)(3)(ii) of this section are met and upon revision of the permit to terminate the substitution plan, the Administrator will deduct the allowances specified in paragraph (e)(3)(ii)(B) of this section. No substitution plan shall be terminated, and no unit shall be de-designated as a Phase I unit, unless such deduction is made.

(iv)(A) If there is a change in the ownership interest of the owners or operators of any unit under a substitution plan approved as meeting the requirements of paragraph (c)(5)(i) or (ii) of this section or a change in such owners' or operators' right to direct dispatch of electricity from a substitution unit under such a plan and the demonstration under paragraph (c)(5)(i) or (ii) of this section cannot be made, then the designated representatives of the units governed by this plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made.

(B) Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if there is a change in the agreement under paragraph (c)(5)(iii) of this section and a demonstration that the agreement, as changed, meets the requirements of paragraph (c)(5)(ii) cannot be made, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if the requirements of the first sentence of paragraph (e)(1)(iii)(A) of this section are not met during a calendar year, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of such calendar year.

(C) If the plan is not terminated in accordance with paragraphs (e)(3)(iv)(A) or (B) of this section, the